TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 523.

THE UNITED STATES, APPELLANT,

vs.

JOSEPH C. FINNELL.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 20, 1902.
(18376.)

1 In the Court of Claims.

JOSEPH C. FINNELL }
vs. } No. 21239.
THE UNITED STATES. }

I. *Petition—Filed January 30, 1899.*

To the Honorable Judges of the Court of Claims:

Your petitioner, Joseph C. Finnell, a citizen of the United States, and a resident of Covington, in the State of Kentucky, respectfully shows:

That from the 1st day of July, 1894, to the 30th day of June, 1898, he was clerk of the United States district and circuit courts for the district of Kentucky, duly qualified, and acted as said clerk.

That your petitioner presented to the accounting officers of the Treasury for payment his accounts for services as said clerk from the 1st day of July, 1894, to the 30th day of June, 1898, sworn to and duly
2 approved by the court, as required by the act of February 22, 1875, 18 Stat. L., 333; that in the settlement of said accounts the accounting officers disallowed and refused payment of fees for the following services, as per Exhibit "A," herewith attached.

Petitioner claims that, in accordance with the provisions of section 828 of the Revised Statutes of the United States, he is entitled to be paid by the United States for each of the services performed by him as aforesaid, and approved and allowed by the court; and though his accounts therefor have been duly presented to the accounting officers of the Treasury for payment of said fees, and although payment of the same has been repeatedly demanded, yet no part of the same has been paid to him, nor to anyone for him, nor has any part of the same been allowed to him in any way as a credit or set-off by any officer or department of the United States; but, on the contrary, allowance and payment thereof has been refused, although his accounts therefor were duly presented to and approved by said court in accordance with law.

Your petitioner further avers that no assignment or transfer of said claim, or any part thereof, has been made by him, and that he is the lawful owner thereof; that his whole compensation, if said fees were added, would not exceed the maximum compensation of $7,000 for any one year.

Wherefore your petitioner prays judgment against the defendant for $995.

JOSEPH C. FINNELL.

By his attorney:
CHARLES C. LANCASTER,
Washington, D. C.

3 EXHIBIT A.

The United States of America, Dr., to Joseph C. Finnell, clerk of the district and circuit courts of the United States for the district of Kentucky at Covington, for services rendered on behalf of the United States from July 1, 1894, to June 30, 1898, to wit:

Item 1. For attendance on court when court was opened by orders of the judge and business actually transacted in said court, 199 days, at $5.00 per day, disallowed, as follows:

Report	5,552, item 3	$50 00
"	6,097, item 2	15 00
"	16,561, item 1	10 00
"	18,950, item 1	85 00
"	18,951, item 1	10 00
"	22,992, item 2	65 00
"	22,993, item 1	105 00
"	24,257, item 1	30 00
"	27,171, item 1	5 00
"	27,576, item 1	40 00
"	30,298, item 1	55 00
"	30,299, item 1	65 00
"	30,374, item 1	20 00
"	34,368, item 1	90 00
"	34,369, item 1	20 00
"	37,206, item 1	80 00
"	37,207, item 1	5 00
"	38,954, item 1	10 00
"	39,775, item 2	90 00
"	43,686, item 1	70 00
"	46,849, item 1	5 00
"	46,850, item 1	70 00
	Total amount claimed	$995 00

DISTRICT OF COLUMBIA,
County of Washington, ss:

Before me, a notary public in and for the District of Columbia, personally appeared Charles C. Lancaster, who, being duly sworn, deposes and says that he is the attorney for the petitioner named in the foregoing petition, and that he is authorized by warrant of attorney, duly executed by said petitioner and filed herewith, to verify said petition, and petitioner is justly entitled to the amount therein claimed from the United States after allowing all just credits and set-offs, and that the facts therein stated are true to the best of his knowledge and belief.

CHARLES C. LANCASTER.

Subscribed and sworn to before me this 30th day of January, 1899.

[SEAL.] ROBERT H. YOUNG,
Notary Public.

4 II. *Traverse—Filed February 20, 1901.*

JOSEPH C. FINNELL
vs.
THE UNITED STATES. } No. 21239. December term, A. D. 1900.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

L. A. PRADT,
Assistant Attorney-General.

5 III. *Findings of fact and conclusons of law.*

(Filed February 26, 1901.)

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

The claimant, Joseph C. Finnell, was clerk of the district and circuit courts of the United States for the district of Kentucky from July 1, 1894, to June 30, 1898, duly qualified and acting.

II.

During said period he entered orders, decrees, and other proceedings of the court on 199 days, extending through said time. None of the judges of said courts were personally present at the time of the entry of such orders, decrees, and proceedings, but said orders, decrees, and proceedings were transmitted to the claimant by mail by the different judges composing the courts of said district. Said orders, decrees, and proceedings were endorsed: "Enter this order" (signed by the judge); or, "Enter this" (signed by the judge); or, "Enter" (signed by the judge). For the purpose of entering said orders, decrees, and other proceedings the claimant made the following entries on the journal for opening and adjourning court on the dates for which attendance is claimed: "Court met: Present, Hon. John W. Barr, sitting as circuit judge" (or Judge Taft, or Judge Lurton, or whoever may have been the judge sending the order. Then follows the entry of the order or other proceedings of the court for that day) and, "It is now ordered that court stand
6 adjourned until ." The date to which adjournment was had was left blank and when another such order, decree, or

other proceeding was received to be entered said blank was filled by entering therein the date on which the same was received, and another entry, similar to the above, opening and adjourning the court to a blank date was made. The record containing the entries of the opening and adjourning of court, the certified presence of the judge, and the orders, decrees, and other proceedings of the court was afterwards signed by the judge sending such orders, decrees, and other proceedings to be entered as the record of the court for the days on which the same were respectively entered. The exhibits A, B, and C, attached to and made a part of these findings, are illustrative copies of the record of the court upon such days.

The nature and character of business transacted on the days on which court was opened and adjourned, as aforesaid, is best shown by the following statement of the subject-matter of said orders, decrees, and other proceedings entered as aforesaid on the days actually claimed for:

Entry of order granting additional time to plead, 4 days.

Entry of order directing drawing of jury by jury commissioners, 18 days.

Entry of order granting restraining order, 5 days.

Entering orders disposing of sundry demurrers and motions, 21 days.

Entry of orders granting rule, 10 days.

Entry of orders granting application for writ of certiorari, 4 days.

7 Entry of orders granting petition for witnesses on behalf of the defendant at the cost of the United States, 7 days.

Entry of orders approving report of receivers, authorizing compromise by receiver, instructions issued to receiver, and various other orders pertaining to the appointment and conduct of receivers, 33 days.

Entry of orders and decrees finally disposing of cases, 17 days.

Sundry entries of orders granting writs of possession, approving bond of clerk of court, granting leave to withdraw exhibits, granting leave to file intervening petition, ordering sale of property, confirming sale of property, determining the priorities of liens, continuing cases, and granting appeals, 80 days.

III.

Claimant made his account for said services as attendance on court when the same was opened and adjourned by order of the judge and while the same was actually in session and business actually transacted, which was verified and presented to the United States Court for approval in the presence of the district attorney, and orders approving the same as being just and according to law were entered of record. Said accounts were then presented to the accounting officers of the Treasury

8 Department for payment, and payment of fees as per diems in Finding IV was refused.

IV.

Item 1. Per diems for attendance on court on the days on which said orders, decrees, and other proceedings were entered, 199 days, at $5 per day, $995.00.

V.

Charges for similar services have been made by the claimant in every account rendered since 1882, and were always allowed and paid by the accounting officers of the Treasury up to June 30, 1893.

CONCLUSION OF LAW.

Upon the foregoing findings of fact, a majority of the court decides, as a conclusion of law, that the claimant is entitled to recover the sum of nine hundred and ninety-five dollars ($995.00).

9 EXHIBIT A.

United States circuit court, district of Kentucky.

May term, Monday, October 15th, A. D. 1894.
Court met. Present: Hon. Wm. H. Taft, circuit judge.

JULIUS C. LANG, ADMR.)
vs.
THE CHES. & OHIO R. R. CO. ET AL.)

This cause coming on to be heard upon the motion of the Chesapeake and Ohio Railway Company for writ of certiorari and for a rehearing upon the motion to remand, the court having considered said motion and the affidavit filed herein, and the original petition for removal herein having been exhibited to the court, and being now duly advised, it is ordered that the clerk of the Kenton circuit court at Independence, Ky., be, and he hereby is, directed and ordered to make and transmit to the clerk of the United States circuit court for the district of Kentucky, at Covington, Kentucky, a true and correct transcript of the papers and proceedings in this case. The order remanding the case is now set aside and a rehearing of the motion to remand is hereby granted and is set for Saturday, October 20th, A. D. 1894, at 10 o'clock a. m. in chambers, at Cincinnati, Ohio.

It is now ordered that court stand adjourned until Friday, November 2nd, A. D. 1894.

10 EXHIBIT B.

United States circuit court, district of Kentucky.

May term, Thursday, September 6th, A. D. 1894.

Court met. Present: Hon. John W. Barr, sitting as circuit judge.

JOSIAH J. WHITE)
vs.
THE CHATTAROI RWY. CO. ET ALS.)

This cause coming on to be heard on the demurrer of the Ohio and Big Sandy R. R. Co. and the joint and several demurrer of the Ohio and Big Sandy R. R. Co., the Chesapeake and Ohio Rwy. Co., and the

Elizabethtown, Lexington and Big Sandy R. R. Co. to the bill of complaint, and the amended and supplemental bills of complaint of the complainant, Josiah J. White, the court now being fully advised of and concerning the matters and things in said demurrers contained, files its written opinion and orders and adjudges that said demurrers be and the same are overruled, to which ruling of the court defendants by counsel, W. H. Jackson, esq., and Hon. John F. Hager, come and accept.

It is now ordered that court stand adjourned until Monday, September 10, A. D. 1894.

11 EXHIBIT C.

United States circuit court, district of Kentucky.

May term, Friday, August 3rd, A. D. 1894.

Court met. Present: Hon. Horace H. Lurton, circuit judge.

SAMUEL C. WILLIAMS
vs.
THE EMPIRE COAL CO. OF KY.

Upon consideration of the bill filed herein on August 3rd, 1894, the court being advised it is ordered and adjudged that a restraining order issue herein, directed to the defendant company, commanding and restraining it, and all of its officers, agents, attorneys, and servants, from declaring any "bond dividend," or otherwise disposing of the issue of bonds mentioned in the bill, otherwise than by actual bona fide sale in open market, and for full market value, paid into the treasury of the company, until further order of the court; and it is further ordered that the defendant company be notified to appear before Hon. John W. Barr, or some other judge authorized to hold court in chambers, at Louisville, Ky., on the first Monday in October, 1894, at 10 o'clock a. m., and show cause why an injunction should not issue and a receiver be appointed as prayed for. It is further ordered that until this matter be disposed of, the proceeds of sale (if any shall be sold) of any of said bonds shall be held subject to the further order of this court.

It is now ordered that court stand adjourned until Wednesday, August 15th, A. D. 1894.

12 IV. *Judgment of the court.*

JOSEPH C. FINNELL
vs.
UNITED STATES. } No. 21239.

At a Court of Claims held in the city of Washington on the 26th day of February, 1901, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the claimant, Joseph C. Finnell, do have and recover of and from the United States the sum of nine hundred and ninety-five dollars ($8995\frac{00}{100}$).

BY THE COURT.

13 *Application for and allowance of appeal.*

From the judgment rendered in the above-entitled cause on the 26th day of February, 1901, in favor of claimant, the defendants by their Attorney-General, on the 3d day of April, 1901, make application for, and give notice of, an appeal to the Supreme Court of the United States.

L. A. PRADT,
Assistant Attorney-General.

Filed April 3, 1901.

The defendants' appeal in this case is allowed.

C. C. NOTT,
Chief Justice.

OCTOBER 1, 1901.

14 Court of Claims.

JOSEPH C. FINNELL
vs.
UNITED STATES. } No. 21239.

I, John Randolph, assistant clerk Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law filed by the court, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 16th day of January, A. D. 1902.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) File No. 18376. Court of Claims. Term No. 523. The United States, appellant, *vs.* Joseph C. Finnell. Filed January 20, 1902.

O